

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GLENDORA,

Plaintiff,

vs.

Civ. No. 00-1695 JP/LCS

JACKIE SELLERS, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER


On August 24, 2001, the Plaintiff filed a Notice of Motion for FRCP Rule 11 Sanctions on Dolan Defendants for Serving Motion to Dismiss on Court but Not Serving Plaintiff Glendora (Doc. No. 66). Having reviewed the Plaintiff's notice of motion, the Court finds that it should be denied.

The Plaintiff argues that the Dolan Defendants (also known as the Gamma Defendants) did not serve her with the Notice of Motion (Doc. No. 41), filed August 14, 2001, and the Memorandum of Law in Support of Defendants' Motion to Dismiss and to Enjoin Further Frivolous Litigation (Doc. No. 42), filed August 14, 2001. The Dolan Defendants filed an Affidavit of Service by Mail (Doc. No. 43) on August 14, 2001 stating that a copy of the Memorandum of Law in Support of Defendants' Motion to Dismiss and to Enjoin Further Frivolous Litigation (Doc. No. 42) and its accompanying affidavits were mailed to the Plaintiff on August 13, 2001 to P.O. Box 416, White Plains, New York 10603. Apparently, the Dolan Defendants used the wrong zip code. The Plaintiff's correct zip code is 10602.

The service issue, however, is now moot since the Plaintiff nonetheless responded to the Dolan Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss and to

Enjoin Further Frivolous Litigation (Doc. No. 42). *See* Notice of Cross Motion to Deny Satterlee Motion to Dismiss and to Impose Rule 11 Sanctions Because of Numerous Defects and to Grant Plaintiff Summary Judgment (Doc. No. 74), filed Sept. 17, 2001. Moreover, Fed. R. Civ. P. 11 is not applicable to allegations of improper service based on an incorrect zip code. Rule 11 applies when 1) counsel does not sign pleadings; 2) counsel files pleadings to harass the opposing party; or 3) counsel files legally or factually frivolous pleadings.

IT IS ORDERED that Plaintiff's Notice of Motion for FRCP Rule 11 Sanctions on Dolan Defendants for Serving Motion to Dismiss on Court but Not Serving Plaintiff Glendora (Doc. No. 66) is denied.


CHIEF UNITED STATES DISTRICT JUDGE